

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAROLYN PILGRIM	:	CIVIL ACTION
	:	
v.	:	
	:	
METRO CHRYSLER PLYMOUTH SUBARU,	:	
METRO DEALERSHIPS,	:	
INDEPENDENCE MOTORS, INC., and	:	
KEYBANK U.S.A., NATIONAL	:	
ASSOCIATION	:	NO. 03-3219

MEMORANDUM AND ORDER

Fullam, Sr. J. March , 2004

The defendant KeyBank U.S.A., National Association filed a motion "to Dismiss Count I of the Complaint for Failure to Plead Fraud With Particularity," and plaintiff responded. I scheduled oral argument on the motion for November 13, 2003. Plaintiff's counsel attended the hearing, but defendant's did not. I thereupon, without hearing any argument from either side, dismissed defendant's motion for lack of prosecution.

Defendant has now filed a Motion for Reconsideration of that Order, based upon the proposition that defendant's counsel did not receive notice of the scheduled oral argument. Plaintiff's counsel does not oppose the Motion for Reconsideration. In these circumstances, I will vacate the order dismissing defendant's motion for lack of prosecution. I conclude, however, that oral argument on defendant's motion is totally unnecessary, since the motion is lacking in merit.

Plaintiff, in Count I, claims that he was defrauded into purchasing a used vehicle. Plaintiff alleges that "the defendants' agents intentionally, recklessly and/or negligently made the following representations to the plaintiff:," and then lists 14 specific false representations. As a matter of pleading, this is certainly sufficient to comply with Federal Rule of Civil Procedure 9(b).

It may well be that plaintiff will be unable to prove that this particular defendant, which apparently financed the purchase of the vehicle, bears responsibility for the misrepresentations alleged, but that is a matter for summary judgment, not Rule 12(b)(6).

An Order follows.

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INDEPENDENCE MOTORS, INC., and	:	
KEYBANK U.S.A., NATIONAL	:	
ASSOCIATION	:	NO. 03-3219

ORDER

AND NOW, this day of March 2004, IT IS ORDERED:

1. That the first paragraph of this Court's Order of November 18, 2003, which dismissed KeyBank's motion for failure to prosecute, is VACATED.

2. The motion of KeyBank U.S.A. National Association to dismiss Count I of plaintiff's complaint is DENIED.

John P. Fullam, Sr. J.